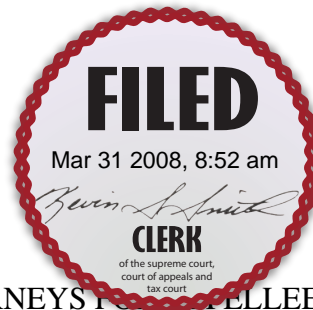


Pursuant to Ind.Appellate Rule 15(A)(3), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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A.L.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 67A04-0712-JV-708
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

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APPEAL FROM THE PUTNAM CIRCUIT COURT  
The Honorable Matthew L. Headley, Judge  
Cause No. 67C01-0706-JD-80

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**March 31, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant-Respondent A.L. appeals from the juvenile court's true finding that he committed what would be Class A misdemeanor Cemetery Mischief<sup>1</sup> if committed by an adult. We affirm.

## FACTS

At some point in late 2006 or early 2007, A.L. and his friend R.D. were walking in Monroe Township in Putnam County when they came upon the Piercy Cemetery.<sup>2</sup> The duo entered the cemetery, pushed over approximately fifteen headstones, and sprayed them with fire extinguishers, causing \$2400 in damage. The State filed a delinquency petition, alleging that A.L. committed what would be Class A misdemeanor cemetery mischief and, in allegations arising from an unrelated incident, what would be Class C felony burglary and Class D felony theft if committed by an adult.

At a hearing on the petition, A.L. admitted the truth of the burglary and theft allegations, and fact-finding commenced on the cemetery mischief allegation. Although Monroe Township trustee assessor Richard Pronckus agreed when asked if the damage had occurred in October of 2006, and R.D.'s best recollection was that the damage had occurred in October of 2006, A.L.'s mother testified that A.L. had not enrolled at North Putnam High School (apparently where he and R.D. met) until November 16, 2006. The

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<sup>1</sup> Ind. Code § 35-43-1-2.1 (2006).

<sup>2</sup> This cemetery is variously identified in the transcript as the "Pearson" or "Percy" Cemetery. The only legible names on the toppled headstones pictured in State's Exhibit 1, however, are "Anderson Osborn," "Cynthia Osborn," "Mary Osborn," and what appears to be "Geo. W. Osborn," which all appear on a list of internees of the "Piercy" Cemetery in Monroe Township, Putnam County. Charles Phillips, *List of Internees at Piercy Cemetery*, <ftp://ftp.rootsweb.com/pub/usgenweb/in/putnam/cemetery/mc-hilis.txt> (last visited March 5, 2008).

State moved to amend its petition to reflect that the damage to Piercy Cemetery occurred in April of 2007. Although the record does not reflect that the juvenile court granted the State's request to amend its petition, the juvenile court found that the State had met its burden of showing that A.L. had committed what would have been cemetery mischief if committed by an adult. After the case was transferred to Montgomery County for disposition, A.L. was ordered to serve nine months on probation.

## **DISCUSSION AND DECISION**

### **Sufficiency of the Evidence**

“When the State seeks to have a juvenile adjudicated to be a delinquent for committing an act which would be a crime if committed by an adult, the State must prove every element of the crime beyond a reasonable doubt.” *J.R.T. v. State*, 783 N.E.2d 300, 302 (Ind. Ct. App. 2003) (citations omitted). “Upon review of a juvenile adjudication, this court will consider only the evidence and reasonable inferences supporting the judgment.” *Id.* (citing *Moran v. State*, 622 N.E.2d 157, 158 (Ind. 1993)). “We will neither reweigh the evidence nor judge witness credibility.” *Id.* (citing *Moran*, 622 N.E.2d at 158). “If there is substantial evidence of probative value from which a reasonable trier of fact could conclude that the defendant was guilty beyond a reasonable doubt, we will affirm the adjudication.” *Id.* (citing *Moran*, 622 N.E.2d at 158).

A.L. contends that because the State failed to produce any evidence that the Piercy Cemetery was damaged after he enrolled at North Putnam and met R.D., it therefore failed to establish that he could have participated. Essentially, A.L. contends that the variance between the State's petition and its proof entitles him to a reversal. As a general

rule, however, “a variance between the date alleged and the State’s proof at trial does not mandate acquittal or reversal.” *Id.* at 304 (citing *R.L.H. v. State*, 738 N.E.2d 312, 317 (Ind. Ct. App. 2000)). “Where time is not ‘of the essence of the offense’ the State is not required to prove the precise date alleged in the information, but need only prove that the crime occurred at any time within the statutory period of limitations.” *Id.*

A.L. does not contend that time is of the essence in a prosecution for cemetery mischief, and we see no reason to conclude that it is. *See Aikens v. State*, 154 Ind.App. 36, 40, 289 N.E.2d 152, 154 (1972) (“Generally, time is not of the essence in proving a criminal offense.”). The only question left, then, is whether the State proved that the crime occurred within the statutory period of limitations. In the case of a misdemeanor, such as cemetery mischief, the State has two years following the commission of the crime within which to commence prosecution or, in this case, file a delinquency petition. *See* Ind. Code § 35-41-4-2(a)(2) (2006). The State filed its delinquency petition on July 16, 2007, requiring it to prove that the cemetery mischief occurred after July 16, 2005. At the hearing, evidence indicated either that the mischief occurred in October of 2006 or after November 16, 2006. Either way, all possible dates of occurrence fall well within the two-year statutory period, and so the State therefore carried its burden.

The judgment of the juvenile court is affirmed.

BAKER, C.J., and DARDEN, J., concur.